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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,904	10/30/2003	Lloyd A. Gross	27109 USA	9234

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EXAMINER

BARNEY, SETH E

ART UNIT	PAPER NUMBER
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3752

DATE MAILED: 02/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/696,904

Applicant(s)

GROSS ET AL.

Examiner

Seth Barney

Art Unit

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6, 8 and 11-23 is/are pending in the application.
- 4a) Of the above claim(s) 7, 9 and 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8, 14, 15 and 18-23 is/are rejected.
- 7) ☒ Claim(s) 11-13, 16, 17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12/27/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Information Disclosure Statement***

1. The information disclosure statement filed December 27, 2004 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because the "other documents" do not cite dates. It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609 ¶ C(1).

***Election/Restrictions***

2. Claims 7, 9, and 10 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on December 23, 2004.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-6, 18-22 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,367,707 to Kang.

Regarding claims 1 and 20, Kang disclose a water fountain diverter device having:

- a diverter body (12) connectable to the faucet and supported therefrom
- a diverter body inlet (28) disposed for receiving water from the faucet
- a first outlet, which flows undiverted. See Figure 6a.
- a first fluid channel (26) within the diverter body for directing water to the first outlet.
- a water fountain spout (14) supported on the device, the spout having a second outlet configured to provide a stream of water in an upward direction. See Figure 6a.
- a second fluid channel (24) for directing water to the water fountain spout.
- a diverter valve (44) having a valve chamber (26) in fluid communication with the body inlet and the first and second fluid channels, and having a valve member hand operable between a first position and a second position whereby the water flows undiverted to the first outlet, and a second position whereby the water flows to the water fountain spout, the valve member being biased towards the first position and having a face areas against which the water pressure of the water flowing through the device acts on to hold the valve member in the second position once the valve is manually

moved to the second position, the valve returning to the first position when the water to the device is stopped. See column 4 line 5 to column 5 line 23.

Regarding claim 2, the diverter body inlet comprises an inlet channel in fluid communication with the valve chamber. See Figure 6a.

Regarding claim 3, the valve member is configured to be moveable within the valve chamber so as to allow water to pass through the valve chamber from the inlet to the first fluid channel when the valve member is in the first position while at the same time blocking water flow to the second fluid channel, and to allow water to pass through the valve chamber from the inlet to the second fluid channel when the valve member is in the second position while at the same time blocking water flow to the first fluid channel. See column 4 line 5 to column 5 line 23.

Regarding claims 4 and 5, the diverter device further comprises a fluid orifice restrictor (34) for restricting the flow of water to the spout.

Regarding claim 6, the restrictor is an orifice opening position to restrict the flow of water between the valve and the second opening to the spout. See Figure 6a.

Regarding claims 18 and 21, the diverter comprises a flow orifice restrictor (28) disposed in the inlet.

Regarding claim 19, Kang discloses an aerator may be added to the outlet. See column 4 lines 45 to 48.

Regarding claim 22, the diverter body comprises a swivel (36), which permits the desired positioning of the device.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,367,707 to Kang as applied to claims 1 and 4 above, and further in view of U.S. Patent No. 5,054,514 to Valdes Marin.

Kang does not disclose an adjustable restrictor. Valdes Marin discloses a water fountain with an adjustable flow restrictor. See Figure 1. It would have been obvious to one having ordinary skill in the art at the time that the invention was made to modify the diverter device of Kang with the flow restrictor of Valdes Marin in order to allow the user to control the amount of fluid sprayed.

8. Claims 14, 15, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,367,707 to Kang as applied to claims 1 and 20 above, and further in view of U.S. Patent No. 4,778,108 to Richards.

Kang does not disclose that a spout externally mounted to the diverter body, a conduit external to the diverter body, or a swivable external spout. Richards discloses a water fountain attachment having an externally mounted spout (58) with an external conduit that is swivable (38). See Figures 2 and 3. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fountain diverter of Kang with the externally mounted, swivable spout of Richards in order to allow better aiming of the spout. U.S. Patent No. 5,069,241 to Hochstrasser discloses a valve for changing between a shower and bath setting, wherein the valve is actuated by pulling a spring biased valve member such that water pressure holds the valve member in place, and the removal of water pressure allows the valve member to move back into the original position. U.S. Patent No. 3,133,701 to McClenahan discloses a combination faucet and drinking fountain with a valve to control outlet flow.

#### ***Allowable Subject Matter***

9. Claims 11-13, 16, and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 5,257,647 to Wilhite discloses a fountain

attachment for a faucet. U.S. Patent No. 4,991,775 to Huber et al. discloses a fountain attachment for a faucet having a spout externally attached to the body. U.S. Patent No. 5,072,757 to Lin discloses a faucet having a rotatable spout. U.S. Patent No. 5,148,832 to Lin discloses a faucet having a rotatable spout.

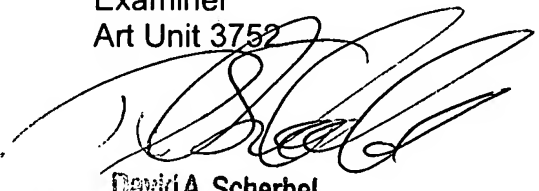
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Seth Barney whose telephone number is (571)272-4896. The examiner can normally be reached on 7:30am-5:00pm (Mon-Fri).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on (571)272-4919. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SB

Seth Barney  
Examiner  
Art Unit 3752



David A. Scherbel  
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